

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Docket No. FAA-2011-0246; Amendment No. 91-321; SFAR No. 112

RIN 2120-AJ93

Prohibition Against Certain Flights Within the Tripoli (HLLL) Flight Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the Tripoli (HLLL) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

DATES: This action is effective March 21, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions about this final rule, contact: David Catey, William Gonzalez, or Steven Laurenzo, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: 202-267-3732, 202-

267-4080, and 202-267-8772, respectively. For legal questions contact: Lorna John, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3921.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA is responsible for the safety of flight in the United States (U.S.) and for the safety of U.S. civil operators, U.S.-registered aircraft, and U.S.-certificated airmen throughout the world. Also, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. The FAA's authority to issue rules for aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106(g), describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under international agreements. Furthermore, the FAA has broad authority under section 44701(a)(5) to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

I. Background

The FAA has safety and national security concerns regarding flight operations in the Tripoli FIR (HLLL). An armed conflict is ongoing in Libya and presents a potential hazard to civil aviation. The runways at Libya's international airports, including the main

international airports serving Benghazi (HLLB) and Tripoli (HLLT) may be damaged or degraded. Air navigation services in the Tripoli (HLLL) FIR may also be unavailable or degraded. In addition, the proliferation of air defense weapons, including Man-Portable Air-Defense Systems (MANPADS), and the presence of military operations, including Libyan aerial bombardments and unplanned military flights entering and departing the Tripoli FIR (HLLL), pose a potential hazard to US operators, U.S.-registered aircraft, and FAA-certificated airmen that might operate within the Tripoli FIR (HLLL).

On March 18, 2011, the UN Security Council adopted Resolution 1973. Paragraph 6 of that Resolution mandates a ban on all flights in the airspace of Libya, with certain exceptions detailed in Paragraph 7. Paragraph 7 also requires that any flights in Libya be coordinated with any mechanism established under Paragraph 8 of the Resolution.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Approval Based on Authorization Request of an Agency of the United States

Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 112,

§91.1603(a), including a U.S. air carrier or a U.S. commercial operator for a charter to transport civilian or military passengers or cargo, the U.S. Government department, agency, or instrumentality may request the FAA approve persons covered under SFAR No. 112, §91.1603(a) to conduct such operations.

An approval request must be made in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality of the U.S. Government; the letter must be sent to the Associate Administrator for Aviation Safety (AVS-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting agency may request an electronic copy of the FAA's response. Electronic submissions to the FAA should be sent to sfar112@faa.gov. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 112, §91.1603(a), and/or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations within the Tripoli (HLLL) FIR where the proposed operation(s) will be conducted;

The request for approval must also include a list of operators, including subcontractors, with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreements(s) for specific flight operations in the Tripoli (HLLL) FIR. Additional contracted operators

may be identified to the FAA at any time after the FAA approval is issued. Updated lists should be sent to sfar112@faa.gov.

If an approval request includes classified information, you may contact Aviation Safety Inspectors David Catey, William Gonzalez, or Steven Laurenzo for instructions on submitting it to the FAA. Their contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

FAA approval of the operation under SFAR No. 112, §91.1603(c), does not relieve persons subject to the SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft will have to comply with the conditions of their certificate and Operations Specifications (OpSpecs). In addition, operators will have to comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the operation, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

When the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send a letter to the requesting department, agency, or instrumentality confirming that the FAA's approval is subject to the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator while still allowing the operator to achieve its operational objectives.

(2) Any approval will specify that the operation is not eligible for coverage under a premium war risk insurance policy issued by the FAA under section 44302 of chapter

443 of title 49, United States Code.

(3) If the operator is already covered by a premium war risk insurance policy issued by the FAA,¹ the FAA will issue an endorsement to the operator's premium war risk insurance policy that specifically excludes coverage for any operations in the Tripoli (HLLL) FIR, including operations under a flight plan that contemplates landing in or taking off from Libyan territory. The endorsement to the premium war risk insurance policy will take effect before the approval's effective date. The operator must further establish that it has obtained substitute war risk coverage for operations in the Tripoli FIR. Additionally, before any approval takes effect, the operator must submit to the FAA a written release of the U.S. Government from all claims and liabilities, and its agreement to indemnify the U.S. Government with respect to any and all third-party claims and liabilities relating to any event arising from or related to the approved operations in the Tripoli (HLLL) FIR. This waiver of claims does not preclude an operator from raising a claim under an effective non-premium war risk insurance policy issued by the FAA.

(4) Other conditions as determined by the FAA.

The FAA will issue OpSpecs to the certificate holder authorizing these operations. The FAA may impose additional conditions on operators through Operations Specifications or letters of authorization. The FAA will notify requesting departments or agencies of FAA approval of civil operations under agreement with a US government agency of any additional conditions beyond those contained in the approval letter.

Request for Exemptions

¹ Coverage under FAA premium war risk insurance policies is suspended as a condition of the premium war risk policy at any time an operation is covered by non-premium war risk insurance through a contract with a department, agency, or instrumentality of the U.S. Government under 49 U.S.C. 44305.

Any operations not conducted under the approval process discussed above must be conducted under an exemption to this SFAR. A request by any person covered under SFAR No. 112, §91.1603(a) for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth in this SFAR. Additionally, the endorsement of any premium war risk insurance policy and a waiver and indemnification agreement will also be required as a condition of any exemption issued under SFAR No. 112, §91.1603(c). The FAA recognizes that there may be operations conducted by other States with the support of the US government. These operations would not be permitted under the approval process; however, the FAA will process these exemption requests on an expedited basis and prior to any private exemption requests.

Regulatory Analysis

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. The FAA expects there will be some costs associated with this emergency rule, but is unable to quantify those costs at this time. However, the FAA also expects that few, if any, operators subject to this SFAR are actually operating in the Tripoli (HLLL) FIR given the current state of affairs. Accordingly, the costs of this SFAR would be minimal.

As the FAA Administrator I certify that this rule will not have a significant economic impact on a substantial number of small entities as defined in Regulatory

Flexibility Act of 1980 (Public Law 96-354), as amended. Because the rule is being issued for aviation safety, it is not considered an unnecessary obstacle to international trade under the Trade Agreements Act of 1979 (Public Law 96-39) and does not create an unfunded mandate for any entity.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Accessing the Government Printing Office's Federal Digital System at: <http://www.gpo.gov/fdsys/>

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Libya.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91-GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531; articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. In part 91, add Subpart M, consisting of §91.1603 to read as follows:

Subpart M—Special Federal Aviation Regulations

§ 91.1603 Special Federal Aviation Regulation No. 112—Prohibition Against Certain Flights Within the Tripoli (HLLL) Flight Information Region (FIR).

(a) *Applicability.* This section applies to the following persons:

- (1) All U.S. air carriers and U.S. commercial operators;
- (2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and
- (3) All operators of U.S.-registered civil aircraft, except operators of such aircraft that are foreign air carriers.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations within the Tripoli (HLLL) FIR.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations within the Tripoli (HLLL) FIR under the following conditions:

(1) Flight operations are conducted under a contract, grant or cooperative agreement with another department, agency, or instrumentality of the United States Government with the approval of the FAA, or by an exemption issued by the Administrator. The FAA will process requests for approval or exemption in a timely manner, with an order of preference first for those operations in support of US government-sponsored activities, second for those operations in support of government-sponsored activities of another State with the support of a US government agency, and third for all other operations.

(2) Flight operations are coordinated with any mechanism established by paragraph 8 of UN Security Council Resolution 1973 (2011).

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR parts 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This Special Federal Aviation Regulation will remain in effect for 3 years from the effective date. The FAA may amend, rescind, or extend this Special Federal Aviation Regulation as necessary.

Issued in Washington, DC on March 20, 2011.

J. Randolph Babbitt
Administrator.

[FR Doc. 2011-6942 Filed 03/21/2011 at 4:15 pm; Publication Date: 03/23/2011]